Criminal Law and Procedure Manual

2003

Supplement

Add to page 3-1
Law enforcement expenses and crime victim's rights act

📖 People v Newton, C/A No. 28085 (June 10, 2003)

Restitution was given under the Crime Victim's Rights Act to a sheriff's department for investigating a crime. The Court of Appeals reversed the judgement. "The general cost of investigating and prosecuting criminal activity is not 'direct financial harm as a result of a crime.' Thus, we hold that the trial court erred by ordering defendant to pay $2,500 restitution."

Act No. 9 Public Acts of 2003

Sec. 255. (1) Except as otherwise provided in this chapter, a person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under this act unless there is attached to and displayed on the vehicle, as required by this chapter, a valid registration plate issued for the vehicle by the department for the current registration year. A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle.

(2) Except as otherwise provided in this section, a person who violates subsection (1) is responsible for a civil infraction. However, if the vehicle is a commercial vehicle which is required to be registered according to the schedule of elected gross vehicle weights under section 801(1)(k), the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(3) A person who operates a vehicle licensed under the international registration plan and does not have a valid registration due to nonpayment of the apportioned fee is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or by a fine of not more than $100.00, or both. In addition, a police officer may impound the vehicle until a valid registration is obtained. If the vehicle is impounded, the towing and storage costs

of the vehicle, and the care or preservation of the load in the vehicle shall be the owner's responsibility. Vehicles impounded shall be subject to a lien in the amount of the apportioned fee and any fine and costs incurred under this subsection, subject to a valid lien of prior record. If the apportioned fee, fine, and costs are not paid within 90 days after impoundment, then following a hearing before the judge or magistrate who imposed the fine and costs, the judge or magistrate shall certify the unpaid judgment to the prosecuting attorney of the county in which the violation occurred. The prosecuting attorney shall enforce the lien by foreclosure sale in accordance with the procedure authorized by law for chattel mortgage foreclosures.

Add to page 4-13

Distributing obscene material redefined and increased penalties - PA 192 (2003)

MCL 722.671

As used in this act:
(a) "Display" means to put or set out to view or to make visible.
(b) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.
(c) "Exhibit" means to do 1 or more of the following:
(*i*) Present a performance.
(*ii*) Sell, give, or offer to agree to sell or give a ticket to a performance.
(*iii*) Admit a minor to premises where a performance is being presented or is about to be presented.
(d) "Minor" means a person less than 18 years of age.
(e) "Restricted area" means any of the following:
(*i*) An area where sexually explicit matter is displayed only in a manner that prevents public view of the lower 2/3 of the matter's cover or exterior.
(*ii*) A building, or a distinct and enclosed area or room within a building, if access by minors is prohibited, notice of the prohibition is prominently displayed, and access is monitored to prevent minors from entering.
(*iii*) An area with at least 75% of its perimeter surrounded by walls or solid, nontransparent dividers that are sufficiently high to prevent a minor in a nonrestricted area from viewing sexually explicit matter within the perimeter if the point of access provides prominent notice that access to minors is prohibited.

MCL 722.677

(1) A person is guilty of displaying sexually explicit matter to a minor if that person possesses managerial responsibility for a business enterprise

selling sexually explicit visual material that visually depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person does either of the following:
(a) Knowingly permits a minor who is not accompanied by a parent or guardian to view that matter.
(b) **Displays that matter knowing its nature, unless the person does so in a restricted area.**
(2) A person knowingly permits a minor to view visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors if the person knows both the nature of the matter and the status of the minor permitted to examine the matter.
(3) A person knows the nature of the matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.
(4) A person knows the status of a minor if the person either is aware that the person who is permitted to view the matter is under 18 years of age or recklessly disregards a substantial risk that the person who is permitted to view the matter is under 18 years of age.
(5) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than **93 days** or a fine of not more than $5,000.00, or both.

Add to page 4-19
Misconduct in office and CSC

📖 People v Perkins, MSC No. 120453 (June 18, 2003).

Defendant was a police officer who had developed a relationship with a sixteen-year-old who was also a friend of the family. The officer's wife coached her and she baby sat for their children. At one point they met while he was on duty and she preformed oral sex on him in his patrol car. He was charged with CSC 1 and misconduct in office. The CSC charged was dismissed because the prosecutor failed to show that the incident was not consensual. The relationship continued even after the incident in the patrol car and there was nothing to indicate that this was a case of "psychological subjugation" on the part of the officer. Without any evidence presented the Court refused to rule on whether psychological subjugation is a viable theory for CSC.

As for the misconduct in office charged that was also dismissed. "Although defendant is a deputy sheriff, there is no evidence that his alleged conduct arose from the performance of his official duties. Rather, the charged conduct arose from a longstanding sexual relationship with the complainant. It is undisputed that defendant was on duty when he engaged in the conduct. However,

the prosecutor presented no evidence correlating that conduct with defendant's public office. The act was neither initiated nor consummated in the exercise of defendant's duties. It is not alleged that the opportunity to commit the specific corrupt behavior in question, when it occurred, arose from or was furthered by defendant's status as a deputy sheriff. Whatever influence defendant's office may once have had on the complainant, there was no evidence that it influenced her to have sexual relations with defendant on the subject occasion."

Misconduct in office charges applies to officer who assault prisoner

📖 People v Milton, C/A No. 234080 (July 8, 2003)

Defendant was a lieutenant in a police department who while on duty was notified that a prisoner had dropped dog feces on the floor of the jail. The lieutenant ordered the subject to pick the feces up but the prisoner refused. When the prisoner refused, defendant grabbed the prisoner by his shirt, pulled him out of his cell, slammed him into some lockers, and proceeded to hit him in the face, knocking him to the floor. Defendant then began striking him in his arms and legs with nunchucks. He then pushed his hands over the feces to pick it up. He was then stripped down and placed naked back in the jail cell.

The officer was convicted of assault and battery and misconduct in office. He first argued that he could not be convicted of both because misconduct in office was included in the assault and battery charge. "To convict on the charge of misconduct in office, the prosecutor must prove that the defendant (1) is a public officer, (2) the misconduct occurred in the exercise of the duties of the office or under the color of the office, and (3) is corrupt behavior.

HELD - It is undisputed that defendant was a public officer and that the misconduct against the prisoner occurred in the exercise of defendant's duties or under the color of the office. Further, it is apparent that defendant's misconduct was intentional, i.e., resulted from a corrupt intent, in that his acts 'demonstrate a tainted or perverse use of the powers and privileges granted them, or a perversion of the trust placed in them by the people of this state, who expect that law enforcement personnel overseeing inmates will do so in a manner that is fair and equitable.' Nevertheless, defendant claims that he cannot be convicted under MCL 750.505 because his specific misconduct, assault and battery, was also prohibited by the assault statutes and, thus, is not one 'for the punishment of which no provision is expressly made by any

statute of this state.' MCL 750.505. However, the misconduct in office charge is the 'indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state.' There is no statute that expressly provides punishment for misconduct in office; therefore, defendant's argument is without merit.

The defendant also argued that if his conviction were upheld it would strike fear in police officers around the state from enforcing the laws for fear of being charged with crimes. If our holding will strike fear in the hearts of police officers throughout this state so that no public officer, under color of the office, will feel entitled to behave in the egregious manner that this defendant did, it would achieve a result that will certainly benefit our criminal justice system. A badge, although a shield offering protection against the imposition of criminal and civil liability for legitimate acts attendant to the performance of official duties, is not a license to perpetrate crimes against or terrorize people during the performance of those duties. When a misguided police officer abuses or contorts the special privileges and powers afforded him or her, a public confidence is breached, resulting in a unique harm to society that threatens our system of justice. Therefore, defendant's concern that public officers will be afraid to mistreat prisoners for fear of criminal reprisal accomplishes a reasonable objective of the misconduct in office offense and supports its continued viability. Further, defendant's fear that, in light of this result, 'any malfeasance on the part of a police officer would constitute misconduct in office' is unfounded. Only malfeasance committed during the exercise of the duties of office or under color of the office and that result from corrupt behavior constitute misconduct in office.

Misconduct in office applies to cheating on a promotional exam

📖 People v Hardrick, C/A No. 238147 (August 26, 2003)

The Chief of Police for DPD requested to see the sergeant's promotional exam to check it for grammatical errors. The tests were given to him and kept at his office. The defendant in this case was the chief's driver and one of the chief's security officers. The defendant took the sergeant's exam and scored 191 out of 200 when the test was designed for a top score of 150. It was determined that the test was compromised and was invalidated. The cost of offering the exam was $250,000, which did not include the officers salaries. The defendant was convicted with misconduct in office.

HELD - Defendant violated the duties of his office because he had a continuing duty not to possess the test materials in advance of the examination, to immediately report to his superior that he had obtained an advance copy of the examination questions, to report anyone who provided unauthorized access to test materials, to avoid conduct unbecoming an officer – such as unauthorized possession of an advance copy of the examination, and to withdraw from the examination after having obtained advance review of the test questions. These actions, and failures to act, constituted acts of malfeasance and misfeasance that violated the duties of defendant's office. According to this Court's statement in *Coutu, supra* at 706-707, quoting Perkins & Boyce, *supra,* at 542: "It is *corrupt* for an officer purposely to violate the duties of his office." The facts and circumstances do not support the allegation that defendant's possession was innocent, inadvertent, and promptly returned. Rather, the score on the examination and the time frame in which it was completed indicate that the examination was reviewed and studied by defendant at the expense of all other applicants seeking promotions whose scores were invalidated. Therefore, the trial court correctly ruled that defendant acted with a corrupt purpose when he made deliberate and knowing use of the advance copies of the test to assist him in taking the sergeant's examination and thereby improperly obtain a promotion.

Add to page 4-22
Premeditation requires time for a second look.

📖 People v Gonzalez, MSC No. 120363 (July 2, 2003)

"To show first-degree premeditated murder, some time span between the initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation. The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a 'second look.' Manual strangulation can be used as evidence that a defendant had an opportunity to take a 'second look.' Moreover, a defendant's attempt to conceal the killing can be used as evidence of premeditation."

HELD - "In this case, there was evidence that the victim was manually strangled. Also, there was evidence that the defendant attempted to conceal his crime by burning the victim's body. Viewing this evidence in a light most favorable to the prosecutor, we conclude there was sufficient evidence for the jury to convict defendant of first-degree premeditated murder."

Injury to construction workers

📖 P.A. 314 of 2003

Sec. 601b. (1) Notwithstanding any other provision of this act, a person responsible for a moving violation in a work zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon is subject to a fine that is double the fine otherwise prescribed for that moving violation.
(2) A person who commits a moving violation for which not fewer than 3 points are assigned under section 320a and as a result causes injury to a person working in the work zone is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both.
(3) A person who commits a moving violation for which not fewer than 3 points are assigned under section 320a and as a result causes death to a person working in the work zone is guilty of a felony punishable by a fine of not more than $7,500.00 or by imprisonment for not more than 15 years, or both.
(4) Whenever practical, signs designed in compliance with the uniform manual of traffic control devices shall be appropriately placed at the work zone by the state transportation department or road authority having jurisdiction over the work zone notifying operators of vehicles of the increased fines and penalties provided by this section for the protection and safety of construction workers.
(5) Subsections (2) and (3) do not apply if the injury or death was caused by the negligence of the person working in the work zone.
(6) As used in this section:
(a) "Emergency scene" means a traffic accident, a serious incident caused by weather conditions, or another occurrence along a highway or street for which a police officer, firefighter, or emergency medical personnel are summoned to aid an injured victim.
(b) "Moving violation" means an act or omission prohibited under this act or a local ordinance substantially corresponding to this act that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine.
(c) "School zone" means that term as defined in section 627a.

Add to page 4-22

Felony murder includes the underlying felony of assault with the intent to rob while armed.

📖 People v Akins, C/A No. 240359 (December 9, 2003)

"Felony murder includes murder committed in the perpetration of, or attempt to perpetrate a robbery. Because a person who commits assault with the intent to rob while armed also commits the necessarily included lesser offense of attempted armed robbery, which is a predicate felony under the felony murder statute, we conclude that assault with intent to rob while armed is also a predicate felony under the felony murder statute."

Add to page 4-30
Force needed for unarmed robbery

📖 People v Hicks, C/A No. 239981 (December 02, 2003)

The victim in this case stood with her purse strap over her shoulder and her hand on her purse. She felt someone pulling her purse strap from behind her. She reacted by moving forward, and the tugging grew stronger, forcing her backward. She struggled to hold on to her purse, but the perpetrator wrestled the purse away from her and then ran away. The defendant argued this was not enough for unarmed robbery.

HELD - Unarmed robbery requires that the defendant took the purse "by force and violence, or by assault or putting in fear," MCL 750.530. "Viewing the evidence in a light most favorable to the prosecution, the testimony reflects that the victim felt a tug on her purse strap, was pulled backward, reflexively lurched forward, and tried to turn her body to maintain possession of her purse. Additionally, the victim testified that the struggle aggravated her tendonitis. A witness also testified that defendant and the victim struggled over the purse. This evidence supports a conclusion that defendant took the purse by force and violence. Moreover, the force exerted by defendant was contemporaneous with the taking and, therefore, sufficient to support a verdict of unarmed robbery."

Add to page 4-31
Eavesdropping applies to cameras hidden by one of the actors in the bedroom

📖 Lewis v Legrow, C/A No. 234723 (August 21, 2003)

The three plaintiffs in this case brought suit against a subject they had at one time or another dated. They discovered that he had hidden a video camera in his bedroom to videotape their sexual relations. They became aware of the video and brought suit. One of the issues in the case was whether he violated MCL 750.539d which states the following:

Any person who installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, or eavesdropping upon the sounds or events in such place, or uses any such unauthorized installation, is guilty of a felony.

The defendant argued that since the activity included himself in his own bedroom the bedroom was not a private place under the statute. The Court of Appeals disagreed.

HELD – "A bedroom in a private home in which a couple engages in intimate relations fulfills the definition of a 'private place' under MCL 750.539a(1) because reasonable people expect 'to be safe from casual or hostile intrusion,' within a bedroom where a door is closed during that period of time. Moreover, reasonable people engaged in sexual relations in a bedroom of a private home expect to be free from 'surveillance,' MCL 750359a(3), i.e., from being secretly spied upon and having their privacy invaded. Thus, interpreting MCL 750.359d in light of the common law, plaintiffs' consenting to have sex with defendant in a private place does not preclude them from maintaining an action and recovering substantial damages upon learning that defendant had surreptitiously photographed intimacy that plaintiffs reasonably expected be kept private."

Add to page 5-5
Altering VIN Numbers

📖 People v Wilson, C/A 232495 (July 1, 2003)

"Rebuilding a stripped car with stolen replacement parts that have missing or defaced identification numbers is obviously 'installation of improper parts' meant to lead someone to believe that an automobile is 'a legitimate vehicle with legitimate parts' and is the sort of conduct that the Legislature meant to penalize when it enacted the statute. Consequently, possession of an air bag, bumpers, hood and fenders with removed or altered identification labels does constitute a violation of MCL 750.415."

Add to page 5-7
CSC fourth is an assault for Home Invasion purposes

📖 People v Musser, C/A No. 239922 (October 28, 2003)

The victim in this case testified that she was sleeping on the couch in her living room when she woke up and saw the defendant standing above her. He grabbed her breasts and tried to slip his hand up her nightgown. He also got on top of her and rubbed his penis over her clothes. Eventually, the victim's mother- in- law came home and the suspect was scared away. He was subsequently convicted of CSC fourth and home invasion one. He argued on appeal that he could not be convicted of home invasion one because CSC 4 is a misdemeanor.

HELD - For first-degree home invasion the offense must be based on an intent to commit, or the actual commission of, a felony, larceny, or assault. Defendant contends that he did not commit one of the enumerated offenses under the home invasion statute because fourth-degree CSC is only a misdemeanor and is not an assault. Michigan has defined the term assault as "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." "We hold that fourth-degree CSC constitutes an assault for the purposes of the home invasion statute, and therefore defendant's conviction for home invasion must be affirmed."

Add to page 5-10
Uttering and publishing applies to a copy of a document

📖 People v Cassadime, C/A No. 247967 (September 09, 2003)

Defendant was assigned to a position, which required her to hold a registered nurse license issued by the State of Michigan. After trying to ascertain her status as a licensed R.N., defendant's employer required her to immediately submit her nursing license. Defendant left and returned with a license, which she had copied. The defendant then presented the copy to her employer. The word "VOID" appeared on the sides of the documents. At the preliminary examination, the State produced evidence that licensure cards have color-coding so that if they are photocopied, the license will state "VOID." The defendant was not licensed and was charged with uttering and publishing. The question presented was whether a copy of a forged, counterfeited, or altered license constitutes a forged instrument within the meaning of the uttering and publishing statute.

HELD - "The language of MCL 750.249 does not distinguish between a copy of and an original false, forged, altered or counterfeit record, deed, or instrument. The clear intent of the statute is to preclude individuals from using a false, forged, alerted

or counterfeit record, deed or instrument to injure or defraud. It is therefore immaterial whether the instrument relied upon by the injured party is an original or a copy. One commits the crime by uttering or publishing a false, forged, altered or counterfeit record, deed or instrument, whether it is an original or a copy. Even though the copy of defendant's alleged license is marked 'VOID,' it appears from the record before us that defendant offered it as proof that she possessed a valid nursing license. Once defendant offered the copy as evidence of a nursing license, the crime was complete."

Add to page 5-24
Possession of stolen property

📖 People v Wilson, C/A 232495 (July 1, 2003)

The elements for possession of stolen property include the following: (1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen."

HELD - "Defendant could be bound over on the charge where he bought a 1997 Jeep as a salvage vehicle, knowing that it was missing numerous essential parts; he therefore knew that it was rebuilt with replacement parts. He owned another car, a 1994 Mercedes, that came from Miami Motors, and that had been rebuilt with parts from another Mercedes that defendant himself had once owned and reported stolen, and that later ended up at Miami Motors. Further, defendant never went through proper channels to acquire a normal title and registration for the vehicle, presumably because the stolen parts would be discovered during the inspection and re-certification process. Instead, he kept the vehicle under the insurance salvage title and drove it with a dealer plate, although this practice was contrary to MCL 257.217c(7). Because the evidence presented established probable cause that defendant knew his 1997 Jeep contained stolen parts, the district court did not abuse its discretion when it bound defendant over, and the trial court did not err in denying defendant's motion to quash."

Add to page 6-5
Meth law rewrote – 4-1-04
P.A. 310 of 2003

333. 7401c. (1) A person shall not do any of the following:
(a) Own, possess, or use a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.
(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.
(c) Provide any chemical or laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or laboratory equipment for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.
(2) A person who violates this section is guilty of a felony punishable as follows:
(a) Except as provided in subdivisions (b) to (f), by imprisonment for not more than 10 years or a fine of not more than $100,000.00, or both.
(b) If the violation is committed in the presence of a minor, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.
(c) If the violation involves the unlawful generation, treatment, storage, or disposal of a hazardous waste, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.
(d) If the violation occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.
(e) If the violation involves the possession, placement, or use of a firearm or any other device designed or intended to be used to injure another person, by imprisonment for not more than 25 years or a fine of not more than $100,000.00, or both.
(f) If the violation involves or is intended to involve the manufacture of a substance described in section 7214(c)(*ii*), by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.
(3) This section does not apply to a violation involving only a substance described in section 7214(a)(*iv*) or marihuana, or both.
(4) This section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.
(5) A term of imprisonment imposed under this section may be served consecutively to any other term of imprisonment imposed for a violation of law arising out of the same transaction.

(6) The court may, as a condition of sentence, order a person convicted of a violation punishable under subsection (2)(c) to pay response activity costs arising out of the violation.
(7) As used in this section:
(a) "Hazardous waste" means that term as defined in section 11103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11103.
(b) "Laboratory equipment" means any equipment, device, or container used or intended to be used in the process of manufacturing a controlled substance, counterfeit substance, or controlled substance analogue.
(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture does not include any of the following:
(*i*) The packaging or repackaging of the substance or labeling or relabeling of its container.
(*ii*) The preparation or compounding of a controlled substance by any of the following:
(A) A practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of his or her professional practice.
(B) A practitioner, or by the practitioner's authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
(d) "Minor" means an individual less than 18 years of age.
(e) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.
(f) "School property" means that term as defined in section 7410.
(g) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

Add to page 6-7
P.A. 308 of 2003

333. 17766c. (1) A person shall not possess more than 12 grams of ephedrine or pseudoephedrine alone or in a mixture.
(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
(3) This section does not apply to any of the following:
(a) A person who possesses ephedrine or pseudoephedrine pursuant to a license issued by this state or the United States to manufacture, deliver, dispense, possess with intent to manufacture or deliver, or possess a controlled substance, prescription drug, or other drug.

(b) An individual who possesses ephedrine or pseudoephedrine pursuant to a prescription.
(c) A person who possesses ephedrine or pseudoephedrine for retail sale pursuant to a license issued under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.
(d) A person who possesses ephedrine or pseudoephedrine in the course of his or her business of selling or transporting ephedrine or pseudoephedrine to a person described in subdivision (a) or (c).
(e) A person who, in the course of his or her business, stores ephedrine or pseudoephedrine for sale or distribution to a person described in subdivision (a), (c), or (d).
(f) Any product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.
(g) Possession of any pediatric product primarily intended for administration to children under 12 years of age according to label instructions.

P.A 312 of 2003

750.502d. (1) A person who transports or possesses anhydrous ammonia in a container other than a container approved by law, or who unlawfully tampers with a container approved by law, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.
(2) As used in this section, "container approved by law' means a container that was manufactured to satisfy the requirements for the storage and handling of anhydrous ammonia pursuant to R408.17801 of the Michigan administrative code or its successor rule.

Add to page 6-17
CCW in a vehicle

📖 Opinion No. 7136 July 30, 2003

A person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

A person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained and that belongs to another person who has exited the vehicle, only if the occupant is not carrying the weapon, a determination that depends on the facts of each case.

Add to page 6-18
CCW license and felony convictions

📖 Stacy v Midland County Concealed Weapons Licensing Board, C/A No. 239606 (November 18, 2003)

The plaintiff in this case was charged with a controlled substance violation and sought deferred sentencing under MCL 333.7411(1) which allows a court to dismiss certain charges if the subject successfully completes probation. The plaintiff completed her probation requirements and now seeks a CCW license. The board denied her license request on the grounds that she had a previous felony conviction on her record. She appealed the boards decision.

HELD: "The Legislature was very clear that the only purpose for which a case dismissed under § 7411 may be used to establish a disqualification or disability imposed by law upon conviction of a crime is to preclude employment by the department of corrections or by a law enforcement agency. Therefore, the clear and unambiguous language of § 7411(1) is that a proceeding dismissed under that section following the successful fulfillment of the terms and conditions of probation may not used to establish a disqualification or disability under the CPLA to obtain a concealed pistol license."

Add to page 6-23
Sale of pistol to subject without a license.

📖 People v Laney, C/A No. 239290 (August 7, 2003)

An 18-year-old entered a gun shop with two under cover officers. The 18-year-old attempted to purchase a pistol and the seller refused. The undercover officer presented a license to purchase a pistol and the seller stated that the money would have to come from the officer. After examining a number of pistols, the 18-year-old, in front of the seller, handed the money to the officer who in turn handed the money to the seller.

HELD – "In a prosecution under MCL 750.223(1), the people would have to prove, as one of the elements of the crime, that the defendant did not sell the pistol to the licensee. MCL 28.422(5). Under the unique facts of this case, there is a material question of fact on that issue. The facts found by the district court show that defendant knew the 18 year old was not a licensee, and therefore, that he could not lawfully sell a pistol to him. Once it was disclosed that the undercover officer had a license, the transaction

proceeded. The 18-year-old asked questions of defendant about different guns, examined different guns, and then attempted to purchase the pistol by handing defendant the money. Defendant, however, refused to take the money from the 18 year old , indicating that the money had to come from the officer. In front of defendant, the 18-year-old gave his money to the officer, who in turn handed it over to defendant. The officer then filled out the paperwork. These facts reveal a significant question for jury resolution, namely whether the pistol was actually 'sold to' the officer when defendant knew that the officer was using the 18-year-old's money to purchase the pistol handled by the 18-year-old, all the while with defendant knowing that the 18-year-old could not lawfully be sold the pistol.

Add to page 6-24
Convictions for felon in possession of firearm and felony-firearm do not violate double jeopardy

📖 People v Colloway, MSC No. 122430 (November 25, 2003)

The Court upheld defendant's convictions of felon in possession of a firearm and felony-firearm, concluding these convictions did not violate federal and state prohibitions against double jeopardy. Since the felon in possession charge is not one of the four felony exceptions explicitly enumerated in the felony-firearm statute, it was clear defendant could constitutionally be given cumulative punishments when charged and convicted of both felon in possession of a firearm and felony-firearm.

Add to page 6-29
Selling alcohol without a license

📖 People v Newton, C/A No. 28085 (June 10, 2003)

Undercover officers entered a barn where there appeared to be a party. At the door a woman stopped them and requested a $2.00 donation for entry. Inside the officer asked to buy a beer at which point they were told that they could not buy one but that they could make another two-dollar donation for the beer. A search warrant was sought and executed and the owners were charged with selling alcohol without a license. On appeal the defendant argued that the statute was unconstitutional.

HELD – "The Michigan Liquor Control Code of 1998 specifically defines the meaning of the word 'sale' as it is used in MCL 436.1203(1). The act defines 'sale' to include 'the exchange, barter,

traffic, furnishing, or giving away of alcoholic liquor.' Thus, defendant's argument that the statute only precludes the selling of alcoholic liquor, and not the exchange of alcoholic liquor for a donation, is without merit. The explicit definition provided in the act provides notice that the exchange of alcohol constitutes a 'sale' for purposes of subsection 203(1). Thus, we reject defendant's argument that the statute is unconstitutionally vague.

"Defendant also argues that the statute gives the trier of fact unlimited discretion to determine whether an offense has been committed. He contends that he was selectively singled out for prosecution because his neighbors did not like the fact that he was noisy. We disagree. Because the act clearly defines the word 'sale' to include the 'exchange, barter, traffic, furnishing, or giving away of alcoholic liquor,' the statute does not confer unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed. Rather, the jury was limited by the clear definition of the term 'sale' provided in the act."

Add to page 7-26
Penalties changed for throwing objects at vehicles – MCL 750.394

(1) A person shall not throw, propel, or drop a stone, brick, or other dangerous object at a passenger train, sleeping car, passenger coach, express car, mail car, baggage car, locomotive, caboose, or freight train or at a street car, trolley car, or motor vehicle.
(2) A person who violates this section is guilty of a crime as follows:
(a) Except as provided in subdivisions (b), (c), and (d), the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.
(b) Except as provided in subdivision (c), (d), or (e), if the violation causes property damage, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $500.00, or both.
(c) If the violation causes injury to any person, other than serious impairment or death, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.
(d) If the violation causes serious impairment to any person, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00, or both.
(e) If the violation causes death to any person, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.
(3) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any

other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.
(4) As used in this section, “serious impairment” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

Add to page 8-10
Laboratory reports and hearsay

📖 People v McDaniel, MSC No. 122922 (November 4, 2003)

“Defendant was charged with selling a packet of heroin to an undercover police officer. The contents of the packet were analyzed by a chemist who was a police officer and who prepared a report indicating that the packet contained heroin. However, at trial, the chemist who performed the analysis did not testify because he had retired. In his place, the prosecution presented Steven Gyure, a police department chemist who had worked in the department's laboratory for thirty-one years. He had no personal knowledge of what occurred during the test of the contents of the packet. Gyure’s testimony, over defense counsel’s objection, was that there had never been a misidentification of a substance during his years working for the department. The court found the foundation sufficient and admitted the report into evidence under MRE 803(8).

HELD – “MRE 803(8) allows admission of routine police reports, even though they are hearsay, if those reports are made in a setting that is not adversarial to the defendant. We do not deal with such a situation here. The report at issue, prepared by a police officer, was adversarial. It was destined to establish the identity of the substance—an element of the crime for which defendant was charged under MCL 333.7401. Because the report helped establish an element of the crime by use of hearsay observations made by police officers investigating the crime, the report cannot be admitted under MRE 803(8).”

“Defendant argues, also, that the laboratory report could not have been admitted under MRE 803(6), the business records exception. The hearsay exception in MRE 803(6) is based on the inherent trustworthiness of business records. That trustworthiness is undermined when the records are prepared in anticipation of litigation. Hence, the police laboratory report is inadmissible hearsay because ‘the source of information or the method or circumstances of preparation indicate lack of trustworthiness.’”

Add to page 8-12

Statements against interest

📖 People v Washington, MSC No. 121864 (July 9, 2003)

Defendant and another man rob a subject who was using a pay phone near a gas station in Detroit. Prior to leaving him they shot the victim in the back. DPD officers, who were unaware of the robbery, saw a vehicle turn down an alley, which was an area known for drug dealings. The vehicle was stopped and as the officers were questioning the subjects they received a radio call about the robbery and shooting. One of the subjects then blurted out, "I did it – I'm the shooter." The subjects were arrested and charged with the robbery. The defense argued that the statement made to the officers should not be allowed in. The Michigan Supreme Court disagreed.

HELD – "We find that the statement to the police officers bears sufficient indicia of reliability to satisfy Confrontation Clause concerns and to allow its admission as substantive evidence at trial. The statement was voluntarily given and made contemporaneously with the events referenced. It was uttered spontaneously without prompting or inquiry by the officers. In fact, the officers had just heard of the robbery when the statement was made. The suspect did not minimize his role in the crimes, admitting that he shot the victim, and he had no motive to lie or distort the truth. In addition, there is nothing in the statement indicating that the declarant was attempting to curry favor at the time he made the statement."

Add to page 8-13
Indigent defendants do not automatically receive expert witnesses

📖 People v. Tanner, MSC No. 123414 (November 25, 2003)

As MCL 775.15 makes clear, a trial court is not compelled to provide funds for the appointment of an expert on demand. An indigent defendant must show a nexus between the facts of the case and the need for an expert. It is not enough for the defendant to show a mere possibility of assistance from the expert.

Add to page 8-15
Evidence of similar acts is admissible to show lack of accident

📖 People v Ackerman, C/A No. 228526 (July 9, 2003)

Defendant was charged with CSC. To show his system of selecting, desensitizing and seducing victims. the trial court allowed evidence in that his pants would often fall down in front of young girls.

HELD - The trial court did not abuse its discretion in admitting the testimony of several girls that defendant allowed his pants to fall down in front of them or that defendant otherwise exposed his genitals, because this evidence was relevant to defendant's plan, scheme, or system as theorized by the prosecutor. All three complainants described incidents in which defendant's overalls fell to the floor while they were present. The frequency with which this happened in front of girls was relevant to show the improbability that defendant's overalls accidentally fell and exposed his genitals and supported an inference that defendant's actions were part of a system of desensitizing girls to sexual misconduct.

Add to page 9-6
Detaining subjects with communicable diseases

📖 A.G. Opinion No. 7141 (October 6, 2003)

The Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox.

Add to page 8-11
Laboratory reports and hearsay

📖 People v McDaniel, MSC No. 122922. Decided November 4, 2003.

"Defendant was charged with selling a packet of heroin to an undercover police officer. The contents of the packet were analyzed

by a chemist who was a police officer and who prepared a report indicating that the packet contained heroin. However, at trial, the chemist who performed the analysis did not testify because he had retired. In his place, the prosecution presented Steven Gyure, a police department chemist who had worked in the department's laboratory for thirty-one years. He had no personal knowledge of what occurred during the test of the contents of the packet. Gyure's testimony, over defense counsel's objection, was that there had never been a misidentification of a substance during his years working for the department. The court found the foundation sufficient and admitted the report into evidence under MRE 803(8).

HELD – "MRE 803(8) allows admission of routine police reports, even though they are hearsay, if those reports are made in a setting that is not adversarial to the defendant. We do not deal with such a situation here. The report at issue, prepared by a police officer, was adversarial. It was destined to establish the identity of the substance—an element of the crime for which defendant was charged under MCL 333.7401. Because the report helped establish an element of the crime by use of hearsay observations made by police officers investigating the crime, the report cannot be admitted under MRE 803(8)."

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Add to page 8-18
Statutory right to polygraph

📖 People v Phillps, MSC No. 121545 (August 7, 2003)

Defendant and a fourteen-year-old girl were observed in the back seat of a car that was parked in a secluded area. The officer noticed that both subjects were unclothed from their waist down and that the male subject's hand was between the girl's legs. After letting them get dressed, the officer interviewed them privately and the girl stated that the subject had digitally penetrated her. The sixty-seven year old subject also admitted to digitally penetrating the victim after being advised of his rights. Before trial, the defendant requested a polygraph under MCL 776.21(5). The first

scheduled test was canceled by the defendant and the second one the examiner refused to test the subject without a medical release from the subject's doctor due to his heart condition. The polygraph issue was not raised again until the jury deliberated his case. He was convicted and he argued that his conviction should be overturned because he was denied the polygraph.

HELD – The Court of Appeals held that the defendant had forfeited his right to a polygraph. The Michigan Supreme Court disagreed. "MCL 776.21(5) extends the right to demand a polygraph examination only to a defendant 'who allegedly has committed' an enumerated criminal-sexual-conduct violation. The status of being an alleged perpetrator does not dissipate until the verdict. Because the statute does not otherwise provide for a time limit within which to exercise the right, under the clear and unambiguous language of MCL 776.21(5), the right is lost only when the presumption of innocence has been displaced by a finding of guilt, i.e., when an accused is no longer 'alleged' to have committed the offense."

Even though there was an error in the Court of Appeals decision, a new trial should be ordered only if "it is more probable than not that the error was outcome determinative." In this case the polygraph would not have changed the outcome of the case. "Given the strength of the prosecution's case, it is not more probable than not that the error was outcome-determinative. The police officer saw defendant remove his hand from between the victim's legs, and the victim told the officer that defendant had digitally penetrated her. In addition, defendant confessed to the crimes charged and provided a complete and detailed description of his conduct and his relationship to the victim. Further, even if defendant had taken and passed a polygraph test, the results would not have been admissible at trial."

Add to page 10-1

Stopping and identifying oneself at an accident scene does not violate the Fifth Amendment

📖 People v Goodin, C/A No. No. 239280 (July 8, 2003)

Defendant was involved in a road rage incident with another subject. When the other vehicle was involved in a crash the defendant continued on his way without stopping and identifying himself as required by 257.617. He argued on appeal that the requirements of 257.617 violated his rights against self incrimination. The Court of Appeals disagreed.

HELD – "The disclosures of one's name, address, vehicle registration number, and driver's license required by MCL 257.617 and MCL 257.619 are neutral and do not implicate a driver in criminal conduct. Moreover, MCL 257.617 is not directed at a 'highly selective group' or a group 'inherently suspect of criminal activities,' but rather is aimed at any driver involved in an accident that results in serious personal injuries or death. Further, driving is a lawful activity and it is not unlawful to be involved in a car accident that results in serious injury. In addition, the purpose of MCL 257.617 is essentially regulatory. Thus, the disclosures mandated under MCL 257.617 and MCL 257.619 do not create a substantial risk of self-incrimination."

"Furthermore, although defendant argues that the act of stopping and reporting would have increased his risk of prosecution for negligent homicide, any inferences that could be drawn from the act of stopping are 'not testimonial in the Fifth Amendment sense' and disclosure of one's name and address is a neutral act that identifies but does not implicate anyone in criminal conduct. Therefore, we hold that being charged and convicted of both failure to stop and negligent homicide do not violate a defendant's Fifth Amendment privilege against compulsory self-incrimination."

Add to page 10-11
Sixth Amendment right to counsel and request to take polygraph

📖 People v Harrington, C/A No. 239699 (October 2, 2003)

Subject was charged for CSC on his five-year-old stepson. He was lodged and prior to his arraignment the officer in charge of the case talked to him about taking a polygraph. Later that day he was arraigned on the charge and returned to the jail. Two weeks after his arraignment, the officer contacted him in jail and asked him if he still wanted to take the polygraph. The subject agreed and informed the officer that he did not want his attorney present but would like the opportunity to discuss the results with his trial counsel. The next day, he was taken out of jail and brought to the polygraph where he waived his rights and failed the examination. The officers then interviewed him and they testified that he confessed and recanted twice during the interview. The defendant claimed that he maintained his innocence throughout the interview. The trial court allowed in the post polygraph statements and he was subsequently convicted of the charges. He argued on appeal that the statements should have been suppressed.

HELD: “The Sixth Amendment right to counsel provides that ‘in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.’ This amendment thus affords an accused the right to rely on counsel as an intermediary between him and the state. When a defendant invokes the Sixth Amendment right to counsel, any subsequent waiver of this right in a *police-initiated custodial interview* is ineffective with respect to the charges filed against the defendant. An exception to this rule exists where the defendant initiates the contact and makes a valid waiver of his rights.”

“On the instant facts, we are convinced that defendant’s statements were obtained in violation of his Sixth Amendment right to counsel. In *People v Anderson*, our Supreme Court suppressed statements that were given under similar circumstances. While the police in *Anderson* initially contacted the defendant regarding a polygraph before his arraignment, they left a telephone message concerning the actual arrangements at the defendant’s home after he had been arraigned and appointed counsel. After the polygraph was administered, the police reminded the defendant of his *Miranda* rights and proceeded to obtain several damaging statements. These statements were ultimately deemed inadmissible because the defendant did not initiate the post-arraignment communication. Similarly, in the instant case, it was the police that contacted defendant regarding the polygraph arrangements. And notably, this visit occurred while defendant was *in jail* and after his arraignment. It is further undisputed that the police knew defendant had been arraigned and appointed counsel at the time of this contact.” The statements were suppressed and a new trial ordered.

Increased requirements for reporting accidents. Public Act 66 of 2003 (Effective: 1/1/2004)

MCL 257. 622. The driver of a motor vehicle involved in an accident that injures or kills any person, **or that damages property to an apparent extent totaling $1,000.00 or more**, shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer. The officer receiving the report, or his or her commanding officer, shall immediately forward each report to the director of the department of state police on forms prescribed by the director of the department of state police. The forms shall be completed in full by the investigating officer. The director of the department of state police shall analyze each report relative to the cause of the reported accident and shall prepare information compiled from reports filed under this section for public use. A copy of the report under this

section and copies of reports required under section 621 shall be retained for at least 3 years at the local police department, sheriff's department, or local state police post making the report.

Third party confession determined not to be credible does not require new trial.

📖 People v Cress, MSC No. 121189 (July 8, 2003)

A subject was convicted of first degree murder for the killing of a young woman. His conviction was based on testimony from other parties to whom he had admitted the killing. Later another subject who was in prison in an Arkansas prison confessed to the murder in exchange for being transferred to a Michigan prison. The confession did not match the circumstances of the killing and the trial court denied the motion for a new trial. The Michigan Supreme Court upheld that decision.

HELD - "Ronning's confessions sharply deviated from the established facts regarding the crime: (1) he stated that Rosansky did not struggle or resist, but the evidence at trial showed that she had defensive wounds and extensive bruising; (2) he stated that he strangled Rosansky, but the medical experts testified at trial that there was no evidence of strangulation and the cause of death was brain injury caused by blunt-force trauma to the head; (3) he stated that he hit Rosansky once with a round rock, while the medical evidence tended to show multiple blows with a linear, club-like object; (4) he did not mention the tree-limb pieces placed in Rosansky's throat; (5) he stated that Rosansky was almost completely naked, wearing only her socks, when in fact she had been found clothed from the waist up; (6) he stated that he 'specifically remembered' not having or being able to have intercourse with Rosansky and denied digitally penetrating her rectum, although the medical evidence showed evidence of forced anal penetration; and (7) he could not find the location where the body was found, even when that location was shown to him and despite the fact that he claimed that he left Rosansky's body in an area that he lived near as an adult. Further, it was not disputed that Ronning had an incentive to confess, and several witnesses testified that he admitted that he fabricated the confession. Finally, Ronning also refused to testify regarding any details concerning Rosansky's murder at the evidentiary hearing, thereby casting doubt on whether he would testify at a new trial. In light of the above inconsistencies between Ronning's confession and the established facts, the trial court did not abuse its discretion in deciding that Ronning was a false confessor and that his testimony

(even presuming he would testify at a new trial) would not make a different result probable on retrial."

Add to chapter 14
New OUIL law changes

Public Act 61 of 2003 (Effective: 9/30/2003)

Sec. 625. (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means either of the following applies:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of **0.08 grams or more** per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of **0.08 grams or more** per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of not less than **0.02 grams or more but less than 0.08 grams** per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of not less than 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(24) The court may order as a condition of probation that a person convicted of violating subsection (1) or (8), or a local ordinance substantially corresponding to subsection (1) or (8), shall not operate a motor vehicle unless that vehicle is equipped with an

ignition interlock device approved, certified, and installed as required under sections 625k and 625l.

(6) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding **and is presumed to be the same as at the time the person operated the vehicle.**

(7) The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other admissible evidence bearing **upon any of the following questions:**

(a) Whether the person was impaired by, or under the influence of, alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) Whether the person had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) If the person is less than 21 years of age, whether the person had any bodily alcohol content within his or her body. As used in this subdivision, "any bodily alcohol content" means either of the following:

(i) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person had an alcohol content of 0.02 grams or more but less than 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than the consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

Presumption of impaired and OUIL are gone. 257.625a(9).

Increase times for suspensions. 257.625f(1)(a).

257. 625g(4) As used in this section, "unlawful alcohol content" means any of the following, as applicable:

(a) If the person tested is less than 21 years of age, 0.02 grams or more of alcohol per 100 milliliters of blood, per 210liters of breath, or per 67 milliliters of urine.

(b) If the person tested was operating a commercial motor vehicle within this state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) If the person tested is not a person described in subdivision (a) or (b), **0.08 grams or more** of alcohol per 100milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(10) Only 1 violation or attempted violation of section 625(6), a local ordinance substantially corresponding to section 625(6), or a law of another state substantially corresponding to section 625(6) may be used as a prior conviction. Under 21 violation.

Add to page 17-2
Liability – Special relationship

📖 Cartwright v City of Marine PD, 203 FED App. 0237P (6th Cir.)

Officers were going to a prisoner pick up when they observed a subject walking on the foggy, unlit shoulder of the roadway. The officers stopped to see if he was o.k. and offered him a ride to a gas station. The subject agreed. In the patrol vehicle officers could smell intoxicants, but did not notice any other signs of intoxication. He was left at the store where he tried to buy beer. The clerk refused and gave him a cup of coffee instead. He then left the store and two hours later was run over and killed while lying in the middle of the road. The autopsy report showed his blood alcohol level was .27 percent and the pathologist estimated that at the time he was with the police officers he would have been in excess of .30. His estate sued the police officers violated his substantive due process rights under 42 USC 1983.

HELD – The Sixth Circuit held that there was no liability. “Plaintiff argues that a special relationship existed between Cartwright and the officers, because the officers had an affirmative duty to help plaintiff, and because such duty was created by state statute. The relationship only arises ‘when the state restrains an individual,’ and in this case, decedent was never in custody. The defendants did not suspect Cartwright was guilty of wrongdoing; they merely offered to give him a ride. Also, Cartwright's inebriation was not ‘imposed or created’ by the state. This Court has held that this fact alone requires a finding that the defendants did not owe the decedent an affirmative duty, because there was no special relationship.”

The family also argued that the officers should have taken the subject into protective custody. “The facts of this case presented a Catch-22 for officers. If they had decided to take Cartwright into protective custody under § 333.6501 of Michigan Compiled Laws, they, too, may have faced another lawsuit based on charges of false imprisonment, on the theory that Cartwright was not really ‘incapacitated’ and the officers had no legal authority to detain him under the statute.”

Add to page 17-4
A dog bite complaint falls under governmental immunity

📖 Tate v City of Grand Rapids, C/A No. 236251 (May 29, 2003)

Officers were investigating an felonious assault complaint where two subjects had fled the scene. A police dog was about to begin a track when a subject arrived at the scene. The officer yelled at the subject to stop. Based on this the dog ran at the subject and even though the handler ordered the dog to return the dog proceeded to bite the subject in his shoulder. The subject sued the police department and argued that governmental immunity did not apply to a dog bite.

HELD – “Pursuant to M.C.L. § 691.1401(f), a 'governmental function' is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Plaintiff argues that, since the police dog bit him against his handler's orders, the attack had nothing whatsoever to do with the proper exercise of the governmental function of policing. However, to determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort. Here, it is undisputed that, at the time of the incident, defendant's

police officers were investigating a reported felonious assault, a crime; thus, they were engaged in police activity--a governmental function--within the contemplation of the Governmental Tort Liability Act when the incident occurred."

Add to page 18-4
There is no VIN exception to the search warrant

📖 People v Wilson, C/A No. 232495 (July 1, 2003)

While searching vehicles, detectives searched for hidden VIN numbers. The prosecution argued that there is no expectation of privacy in VIN numbers and thus the Fourth Amendment was not applicable. The Court of Appeals disagreed.

HELD – "We disagree with the prosecution's assertion that a line of cases unambiguously declares that any viewing of any VIN is not a search and therefore always is permissible." Rather the search for hidden VINs such as on engine blocks, under bumpers, etc. must be based on probable cause that the VINs are improper. In this case there was probable cause and thus the automobile exception was applicable. "An officer at the scene knew from his past experience with the 1994 Mercedes that the vehicle had once been missing several major parts, but now was completely rebuilt. He knew that defendant once reported stolen a 1995 Mercedes that used many of the same parts of the 1994 Mercedes. He knew that the cars were associated with Miami Motors, which had a history of rebuilding stripped cars with parts from stolen cars. He also knew from his LEIN check that the 1997 Jeep was a salvage vehicle that had been stripped of major parts, but it was now rebuilt, and defendant was driving it, but it remained under the salvage title and the dealer plate. Given these circumstances, the officer had probable cause to believe that there were stolen parts in the vehicles. The search was therefore proper under the automobile exception."

Add to page 18-9
Search warrant as a pretext to search for other objects

📖 People v Wilson, C/A 232495 (July 1, 2003)

Defendant argued that evidence should be suppressed because auto theft officers used a search warrant for financial and tax records as a ruse to gain entry and examine his vehicles.

HELD – “As long as the warrant was valid, and the officers confined their search to areas permitted by the warrant, their subjective intent was irrelevant. The fact that auto theft investigators were involved in a search related to tax violations does not alter this analysis, provided the search was properly limited—even if the officers subjectively expected to find evidence of stolen vehicle parts. Thus, defendant’s argument is without merit.”

Add to page 18-11
District court judges may issue search warrants

📖 P.A. 165 of 2003 (October 17, 2003) - MCL 780.651

(3) A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.

Add to page 18-18
Knock and Announce must be reasonable

📖 U. S. v Banks, Sup Ct No. 02-473 (December 2, 2003)

Officers went to Bank’s apartment to execute a search warrant. They called out "police search warrant" and knocked on the front door hard enough to be heard by officers at the back door. They waited for 15 to 20 seconds with no response and then broke open the door. Banks was in the shower and testified that he heard nothing until the crash of the door. Banks argued on appeal that the entry was unreasonable and that the evidence found should be suppressed. The Ninth Circuit Court of Appeals suppressed the evidence holding that the instant entry had no exigent circumstances, making forced entry by destruction of property permissible only if there was an explicit refusal of admittance or a time lapse greater than the one here. The U.S. Supreme Court disagreed.

HELD: “The officers' 15-to-20-second wait before forcible entry satisfied the Fourth Amendment. The standards bearing on whether officers can legitimately enter after knocking are the same as those for requiring or dispensing with knock and announce altogether. The obligation to knock and announce before entering gives way when officers have reasonable grounds to expect futility or to suspect that an exigency, such as evidence destruction, will arise instantly upon knocking. Since most people keep their doors locked, a no-knock entry will normally do some damage, a fact too

common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry."

"This case turns on the exigency revealed by the circumstances known to the officers after they knocked and announced, which the Government contends was the risk of losing easily disposable evidence. After 15 to 20 seconds without a response, officers could fairly have suspected that Banks would flush away the cocaine if they remained reticent. Each of Banks's counterarguments--that he was in the shower and did not hear the officers, and that it might have taken him longer than 20 seconds to reach the door--rests on a mistake about the relevant inquiry. As to the first argument, the facts known to the police are what count in judging a reasonable waiting time, and there is no indication that they knew that Banks was in the shower and thus unaware of an impending search. As to the second, **the crucial fact is not the time it would take Banks to reach the door but the time it would take him to destroy the cocaine.** It is not unreasonable to think that someone could get in a position to destroy the drugs within 15 to 20 seconds. Once the exigency had matured, the officers were not bound to learn anything more or wait any longer before entering, even though the entry entailed some harm to the building."

"This Court's emphasis on totality analysis leads it to reject the Government's position that the need to damage property should not be part of the analysis of whether the entry itself was reasonable and to disapprove of the Ninth Circuit's four-part vetting scheme."

"The entry here also satisfied 18 U. S. C. §3109, which permits entry by force "if, after notice of his authority and purpose, [an officer] is refused admittance." Because §3109 implicates the exceptions to the common law knock-and-announce requirement that inform the Fourth Amendment itself, §3109 is also subject to an exigent circumstances exception, which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place."

Add to page 18-23
Possession charges where there are multiple occupants.

📖 Maryland v Pingle, Sup Ct No. 02-809. (December 15, 2003)

At 3:16 a.m. a Baltimore County Police officer stopped a car for speeding. There were three occupants in the car. Pringle was the front-seat passenger. The officer asked the driver for his license and registration. When the driver opened the glove compartment to

retrieve the vehicle registration, the officer observed a large amount of rolled-up money. A computer check did not reveal any violations and the driver was given a verbal warning. A second patrol car arrived, and the first officer asked the driver if he had any weapons or narcotics in the vehicle. The driver indicated that he did not and then consented to a search of the vehicle. The search yielded $763 from the glove compartment and five plastic glassine baggies containing cocaine from behind the back-seat armrest. When the officer began the search the armrest was in the upright position flat against the rear seat. The officer pulled down the armrest and found the drugs, which had been placed between the armrest and the back seat of the car. The officer questioned all three men about the ownership of the drugs and money, and told them that if no one admitted to ownership of the drugs he was going to arrest them all. The men offered no information regarding the ownership of the drugs or money. All three were placed under arrest and transported to the police station.

Later that morning, Pringle waived his rights under Miranda rights and gave an oral and written confession in which he acknowledged that the cocaine belonged to him, that he and his friends were going to a party, and that he intended to sell the cocaine or "[u]se it for sex." Pringle maintained that the other occupants of the car did not know about the drugs, and they were released.

On Appeal to the United States Supreme Court, Pringle argued that there was not sufficient probable cause to arrest him and since his arrest was illegal his confession should also be suppressed.

HELD – "Here, it is uncontested that the officer, upon recovering the suspected cocaine, had probable cause to believe a felony had been committed. The question is whether he had probable cause to believe Pringle committed that crime. The 'substance of all the definitions of probable cause is a reasonable ground for belief of guilt,' and that belief must be particularized with respect to the person to be searched or seized. To determine whether an officer had probable cause to make an arrest, a court must examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.

"In this case, Pringle was one of three men riding in a Nissan Maxima at 3:16 a.m. There was $763 of rolled-up cash in the glove compartment directly in front of Pringle. Five plastic glassine baggies of cocaine were behind the back-seat armrest and accessible to all three men. Upon questioning, the three men failed

to offer any information with respect to the ownership of the cocaine or the money."

"We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly."

Add to page 18-32
Knock and talk procedure

📖 People v Galloway, C/A No. 241804 (December 9, 2003)

Officers received an anonymous tip that defendant was growing marijuana in his back yard. During a helicopter fly over they observed pots and potting materials in the back yard of the house. This information was relayed to a ground crew who proceeded to the residence. The first officer to arrive observed a subject on the side of the house who turned out to be the defendant's neighbor. The officer then proceeded around the side of the house to the back yard. While in the back of the house, the officer saw marijuana plants growing in a lean-to attached to the back of the house. Defendant was then seen walking out of the woods at the rear of the property and started heading into the lean-to. When he refused to obey the officer's command's to stop he was placed in handcuffs. Officers then went to the front of the house and knocked on the front door. The defendant's wife answered and officers did a protective sweep of the house and then took defendant's wife to a patrol car to be questioned. The wife eventually signed a consent form and 122 marijuana plants were seized.

HELD – In a two to one decision, the Court of Appeals suppressed the evidence in that this was not a valid "knock and talk." "Here, a drug enforcement team, consisting of four plainclothes officers, and in addition, two uniformed officers, descended upon defendant's home, arriving in succession in several separate vehicles. The officer who discovered the marijuana, did not wait for the other officers to conduct the purported "knock and talk," but instead proceeded directly to the back of defendant's home, after his contact with an individual in the side yard of the home. The police report stated that according to the anonymous tip, the marijuana was in a six-foot by four-foot container right behind defendant's house. The officer saw the marijuana plants inside the lean-to in a

large container. At that point, defendant was coming out of the woods at the back of the property. The police did not first approach the front door of home, not did they proceed along a path that the public could be expected to travel in visiting defendant's home, nor did they simply approach defendant as he was standing in his yard to ask permission to "look around." Only after the marijuana was discovered, did the officers go to the door of the home and knock, at which point Mrs. Galloway answered the door. Such intrusions cannot be sanctioned under the guise of knock and talk and 'ordinary citizen contact.'"

The consent was also held to be invalid. "Having examined the record, we find no clear error in the court's findings. It was undisputed that the police required Mrs. Galloway to sit in the police car while interviewing her and obtaining her consent to search. Testimony established that the police repeatedly asked Mrs. Galloway to sign the consent to search form before obtaining her signature and told her that they would have to get a warrant if she did not sign the consent. Mrs. Galloway testified that she did not want to sign the consent form and that the police told her it would just take longer if she did not. She stated that she felt she had no choice but to sign the consent. This Court must give deference to the trial court's factual findings where the credibility of witnesses is involved."

The **dissent** held that the contact was voluntary in that the officer went to the back yard in order to locate the owner to do a knock and talk and that the officers observations fell under plain view.

Add to page 18-34

Some checkpoints are constitutional

📖 Illinios v Lidster, SupCt No. 02-1060 (January 13, 2004)

Police set up a highway checkpoint to obtain information from motorists about a hit-and-run accident occurring about one week earlier at the same location and time of night. Officers stopped each vehicle for 10 to 15 seconds, asked the occupants whether they had seen anything happen there the previous weekend, and handed each driver a flyer describing and requesting information about the accident. As respondent Lidster approached, his minivan swerved, nearly hitting an officer. The officer smelled alcohol on Lidster's breath. Another officer administered a sobriety test and then arrested Lidster. He was convicted in Illinois state court of driving under the influence of alcohol. He challenged his arrest and conviction on the ground that the government obtained evidence through use of a checkpoint stop that violated the Fourth

Amendment. The trial court rejected that challenge, but the state appellate court reversed. The State Supreme Court agreed, holding that, in light of *Indianapolis* v. *Edmond,* 531 U.S. 32, the stop was unconstitutional.

Held: The checkpoint stop did not violate the Fourth Amendment.

(a) *Edmond* does not govern the outcome of this case. In *Edmond*, this Court held that, absent special circumstances, the Fourth Amendment forbids police to make stops without individualized suspicion at a checkpoint set up primarily for general "crime control" purposes. 531 U.S., at 41, 44. Specifically, the checkpoint in *Edmond* was designed to ferret out drug crimes committed by the motorists themselves. Here, the stop's primary law enforcement purpose was *not* to determine whether a vehicle's occupants were committing a crime, but to ask the occupants, as members of the public, for help in providing information about a crime in all likelihood committed by others. *Edmond*'s language, as well as its context, makes clear that an information-seeking stop's constitutionality was not then before this Court. Pp. 2—4.

(b) Nor does the Fourth Amendment require courts to apply an *Edmond*-type rule of automatic unconstitutionality to such stops. The fact that they normally lack individualized suspicion cannot by itself determine the constitutional outcome, as the Fourth Amendment does not treat a motorist's car as his castle, see, *e.g., New York* v. *Class,* 475 U.S. 106, 112—113, and special law enforcement concerns will sometimes justify highway stops without individualized suspicion, see, *e.g., Michigan Dept. of State Police* v. *Sitz,* 496 U.S. 444. More-over, the context here (seeking information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play, and an information-seeking stop is not the kind of event that involves suspicion, or lack thereof, of the relevant individual. In addition, information-seeking highway stops are less likely to provoke anxiety or to prove intrusive, since they are likely brief, the questions asked are not designed to elicit self-incriminating information, and citizens will often react positively when police ask for help. The law also ordinarily permits police to seek the public's voluntary cooperation in a criminal investigation. That the importance of soliciting the public's assistance is offset to some degree by the need to stop a motorist–
which amounts to a "seizure" in Fourth Amendment terms, *e.g., Edmond, supra*, at 40–is not important enough to justify an *Edmond*-type rule here. Finally, such a rule is not needed to prevent an unreasonable proliferation of police checkpoints. Practical considerations of limited police resources and community hostility to traffic tie-ups seem likely to inhibit any such proliferation, and the Fourth Amendment's normal insistence that the stop be

reasonable in context will still provide an important legal limitation on checkpoint use.
(c) The checkpoint stop was constitutional. In judging its reasonableness, hence, its constitutionality, this Court looks to "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown* v. *Texas,* 443 U.S. 47, 51. The relevant public concern was grave, as the police were investigating a crime that had resulted in a human death, and the stop advanced this concern to a significant degree given its timing and location. Most importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. Viewed objectively, each stop required only a brief wait in line and contact with police for only a few seconds. Viewed subjectively, the systematic contact provided little reason for anxiety or alarm, and there is no allegation that the police acted in a discriminatory or otherwise unlawful manner.

Add to page 18-35
Reasonable suspicion for a Terry Stop

📖 U.S. v Townsend, 2003 FED App. 0160P (6th Cir.)

A Wal-Mart employee contacted a police department and reported that two men had just purchased a large quantity of pseudoephedrine tablets, lithium batteries, camping fuel and other items used to make methamphetamine. The caller provided description of the subject's vehicle and plate. The dispatcher informed an officer of the complaint and also informed the officer that the vehicle was registered to a subject that had been in a previous meth lab explosion. Another officer relayed via radio that he had investigated the vehicle previously for the theft of anhydrous ammonia, another ingredient used in manufacturing methamphetamine. Based on this information, the officer stopped the vehicle and approached the driver who appeared to be nervous and had trouble speaking. The driver also had a knife clipped to his belt. The officer patted the driver down and felt a long skinny item in his back pocket. The officer asked the driver to remove it and it turned out to be an item the officer recognized as being used for inhaling meth. Residue of a powdery substance was on the end. The subject was then placed under arrest and a baggie of meth was located in the subject's front trouser pocket. The defendant argued on appeal that there was not sufficient basis to stop his vehicle.

HELD – “Reasonable suspicion to stop may be satisfied by an officer's personal observations and the collective knowledge of the police. While an officer making a Terry stop must have more than a hunch, reasonable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. Williams's knowledge of the alleged purchase of methamphetamine precursors, coupled with his contemporaneous observation of a car closely matching the description of the vehicle linked to that purchase, in addition to the information regarding Townsend's possible previous involvement in the illegal manufacture of methamphetamine, provided him with specific and articulable facts justifying the brief investigatory stop. Evidence uncovered during this stop, in turn, provided probable cause for Townsend's arrest.”

Tips and reasonable suspicion to stop

📖 U.S. v Patterson, 2003 FED App. 0290P (6th Cir.)

A police department received an anonymous complaint of a group of males selling drugs on a certain drug corner. This complaint was one of 20 the responding officers were given and they arrived five hours after the call came in. The officers testified that the corner was a known hot spot. Officers went to the location and observed a groups of males near the corner. As they officers approached, the group moved away and tucked their hands into their pockets. One subject made a throwing movement toward some bushes. The officers then stopped the subjects and patted them down finding a pistol on one of them. He argued on appeal that the pat down was illegal.

HELD – The court held that under these facts there was insufficient reasonable suspicion to justify the Terry stop and pat down. The call was anonymous and came in five hours before the incident. Also the actions of the group did not meet the threshold needed under the totality of the circumstances.